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Attorneys for Plaintiff Somersett Owners Association

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

SOMERSETT OWNERS ASSOCIATION, a Nevada non-profit corporation; Plaintiff, vs. SOMERSETT COUNTRY CLUB, INC., a Nevada non-profit corporation dba SOMERSETT GOLF AND COUNTRY CLUB; JOHN DOES I-X, inclusive; and ROE CORPORATIONS I-X, inclusive; Defendants.	Case No.: Dept. No.: **COMPLAINT** **Exempt from Arbitration:** -Excess of $50,000.00 -Specific Performance Requested -Declaratory Relief Requested

Plaintiff SOMERSETT OWNERS ASSOCIATION, by and through its attorneys Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP, complains and alleges against Defendant SOMERSETT COUNTRY CLUB, INC., dba SOMERSETT GOLF AND COUNTRY CLUB as follows:

PARTIES

A. PLAINTIFF

1. Plaintiff SOMERSETT OWNERS ASSOCIATION (hereinafter, the "Association" or "Plaintiff"), at all times herein mentioned, is and was incorporated as a domestic non-profit Nevada corporation with its principal place of business in Washoe County,

Nevada as a common-interest community governed by Nevada Revised Statute (hereinafter, "NRS") Chapter 116.

2. The Association is comprised of owners of single family residential units and common areas, including but not limited to, improvements, appurtenances, common areas, and structures built and existing upon certain parcels of real property, all as more specifically described in the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions recorded on March 3, 2005 in the Official Records of Washoe County, Nevada, and any amendments thereto (hereinafter, the "CC&Rs").

3. By the terms of the CC&Rs and pursuant to NRS Chapter 116 of the Common-Interest Ownership Act, and specifically including NRS 116.3102, the Association is granted the general authority and responsibility to bring the herein stated action in its own name, on behalf of the units' owners within the Association, and hereby asserts and exercises such authority and responsibility as to the claims related to the Property identified herein.

4. According to the CC&Rs, the Association has the right and duty to manage, operate, control, repair, replace, and restore the Association, including the right to enter into contracts to accomplish its duties and obligations, and has all of the powers necessary to carry out its rights and obligations, including the right, duty, and power to contract for legal services to prosecute any action affecting the Association and/or its homeowners when such action is deemed by it necessary to enforce its powers, rights, and obligations, including the bringing of this action.

B. DEFENDANTS

5. Plaintiff is informed and believes, and based thereon alleges, that Defendant SOMERSETT COUNTRY CLUB, INC., dba SOMERSETT GOLF AND COUNTRY CLUB (hereinafter, the "Club" or "Defendant") at all times herein mentioned is, was, and continues to be incorporated as a domestic non-profit Nevada corporation with its principal place of business in Washoe County, Nevada.

6. The true names and capacities of Defendants JOHN DOES I-X and ROE CORPORATIONS I-X are unknown to Plaintiff. Therefore, Plaintiff sues those Defendants by

such fictitious names. Plaintiff alleges on information and belief that each of the Defendants designated as a DOE is a partner, officer, director, manager employer, or employee, or is in some manner associated with one or more of the Defendants, and is responsible in some manner for the events referred to herein. Plaintiff alleges on information and belief that each of the ROE CORPORATIONS is an entity that is a parent, sibling, manager, subsidiary, partner, shareholder, or alter ego of, or in some manner associated with, one or more of the Defendants, and is responsible in some manner for the events referred to herein. Plaintiff will ask leave of this Court to amend its Complaint to insert the true names and capacities of these Defendants, and to join such Defendants in this action when such names have been ascertained by Plaintiff.

JURISDICTION AND VENUE

7. Jurisdiction is proper in Washoe County, Nevada because at all relevant times, Defendant did business in Washoe County, Nevada.

8. Jurisdiction is proper in Washoe County, Nevada because substantial events pertaining to the claims herein took place in Washoe County, Nevada.

9. Venue is proper in Washoe County, Nevada because acts giving rise to the claims herein occurred within this judicial district, and Defendant regularly conducts business in and has engaged and continues to engage in the wrongful conduct alleged herein within this judicial district.

GENERAL ALLEGATIONS

A. THE AGREEMENTS

10. On or about August 18, 2014, the Association and the Club entered into a Real Property Purchase Agreement (hereinafter, the "Purchase Agreement") with the Club as Seller and the Association as Buyer.

11. Pursuant to the Purchase Agreement, the Club sold, and the Association purchased, approximately 220 acres of golf course/green space (hereinafter, the "Property" or the "Premises") situated in the City of Reno, County of Washoe, State of Nevada.

12. As a material part of the Purchase Agreement, in Section 9A, the Club agreed to, in part, warranty the Premises and its condition for four years, and agreed to promptly and

diligently repair damage to or destruction of all or any part of the Property.

13. Section 9A of the Purchase Agreement specifically provided:

> 9A. FOUR YEAR WARRANTY; AS IS PROVISION. Seller shall (at its sole expense) promptly and diligently repair, restore and replace as required to maintain or to remedy all damage to or destruction of all or any part of the Property including capital expenditures. Seller shall (at its sole expense) maintain the Improvements located on the Property to standards reasonably agreed with Buyer and consistent with maintaining the quality, functionality, usefulness of the Property as a championship golf course and country club. The completed work of maintenance, compliance, repair, restoration or replacement shall be equal in value, quality and use to the condition of the Improvements before the event giving rise to the work, except as provided to the contrary herein as may be required by applicable law. Seller's maintenance and repair obligations hereunder shall continue for four (4) years after the Close of Escrow (the '**Warranty Period**'), and this 4 year covenant to maintain and repair the Property shall survive the Close of Escrow. Notwithstanding the foregoing, Seller's maintenance and repair obligations during the Warranty Period shall not apply to routine landscaping maintenance (e.g. grass cutting) or the extent of Buyer's misuse of the Property. Except as expressly set forth in **Section 9** and except for the four (4) year warranty described above, Buyer is purchasing the Property "AS IS" and "WHERE IS", and with all faults, and Seller makes no representations or warranties, whether express or implied, by operation of law or otherwise, with respect to the quality, physical condition or value of the Property, the compliance of the Property with applicable building or fire codes or other laws or regulations. Except as expressly set forth in **Section 9**, Buyer agrees that Seller is not liable or bound by any guarantees, promises, statements, representations or information pertaining to the Property made or furnished by Seller or any agent, officer, director, employee or other person representing or purporting to represent Seller."

14. On or about February 25, 2015, the Association and the Club entered into a Commercial Lease (hereinafter, the "Lease") with the Association as Landlord and the Club as Tenant.

15. Pursuant to the Lease, the Association leased the Premises back to the Club for a term of fifty (50) years, beginning February 25, 2015.

16. As a material part of the Lease, the Club as tenant and vendor agreed to maintenance obligations contained therein.

17. As a material part of the Lease, pursuant to Section 8.1, the Club agreed to (at its sole expense) promptly and diligently repair, restore, and replace as required to maintain or to

remedy all damage to or destruction of all or any part of the Premises.

18. Section 8.1 and 8.2 of the Lease specifically provided:

> 8.1 General Tenant Obligation. Subject to Section 7 above, and except as provided in Section 8.2, Tenant shall (at its sole expense) promptly and diligently repair, restore and replace as required to maintain or to remedy all damage to or destruction of all or any part of the Premises and the Tenant Property including capital expenditures. Tenant shall (at its sole expense) maintain the Improvements located on the Premises to standards reasonably agreed with Landlord and consistent with maintaining the quality, functionality, and usefulness of the Premises as a championship golf course and country club. Regarding landscaping, Tenant shall follow the maintenance criteria set forth on Exhibit B attached hereto. The completed work of maintenance, compliance, repair, restoration or replacement shall be equal in value, quality and use to the condition of the improvements before the event giving rise to the work, except as provided to the contrary herein or as may be required by applicable law. Landlord's election to perform any obligation of Tenant under this Section following an Event of Default shall not constitute a waiver of any right or remedy for Tenant's default and Tenant shall promptly reimburse, defend and indemnify Landlord against all liability, loss, cost and expense arising from it. Nothing in this Section defining the duty of maintenance shall be construed as limiting any provisions in this Lease relating to condemnation or to damage or destruction during the Term. No deprivation, impairment or limitation of use resulting from any event a work contemplated by this Section shall entitle Tenant to any abatement, reduction or setoff in rent nor to any termination or extension of the Term. Tenant's maintenance and repair obligations shall continue for the entire term of the Lease; provided, however, in the event that this Lease is terminated, Tenant's maintenance and repair obligations for the Premises shall nevertheless continue for four (4) years after the Commencement Date (the 'Warranty Period'), and this 4 year covenant to maintain and repair the Premises shall survive the termination of this Lease. Notwithstanding the foregoing, in the event this Lease has terminated, Tenant's maintenance and repair obligations during the Warranty Period shall not apply to routine landscaping maintenance (e.g. grass cutting) or to the extent of Landlord's misuse of the Premises.
>
> 8.2 Landlord Obligation. Landlord shall have no obligation to alter, remodel, improve, repair, decorate or paint the Premises, including, but not limited to, the structural portions of the roof, foundation and walls of the Premises. Tenant hereby expressly waives the right to make repairs at Landlord's expense as may be provided under Nevada law.

19. As an additional material part of the Lease, the Club agreed to a broad indemnity of the Association, providing:

> None of the Landlord Entities shall be liable and Tenant hereby

> waives all claims against them for any damage to any property or any injury to any person in or about the Premises by or from any cause whatsoever (including without limiting the foregoing, rain or water leakage of any character from the roof, windows, walls, basement, pipes, plumbing works or appliances, the Premises not being in good condition or repair, gas, fire, oil, electricity or theft), except to the extent caused by or arising from the gross negligence or willful misconduct of Landlord or its agents, representatives, property managers, employees or contractors. Tenant shall protect, indemnify, defend (with counsel reasonably satisfactory to Landlord) and hold the Landlord Entities harmless from and against any and all loss, claims, liability or costs (including court costs and attorney's fees) incurred by reason of: (a) any damage to any property (including but not limited to property of any Landlord Entity) or any injury (including but not limited to death) to any person occurring in, on or about the Premises to the extent that such injury or damage shall be caused by or arise from any actual or alleged act, neglect, fault, or omission by or of Tenant or any Tenant Entity to meet any standards imposed by any duty with respect to the injury or damage; (b) the conduct or management of any work whatsoever done by the Tenant in or about the Premises or from operations of the Tenant concerning the Premises; (c) Tenant's failure to comply with any and all governmental laws, ordinances and regulations applicable to the condition or use of the Premises or its occupancy and/or (d) any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of the Tenant to be performed pursuant to this Lease.. The provisions of this Section shall survive the termination of this Lease with respect to any claims or liability accruing prior to such termination. Any indemnification or insurance of Landlord shall apply to and inure to the benefit of all the following "Landlord Entities", being Landlord and Landlord's directors, officers, trustees, partners, beneficiaries, stockholders, managers, members, employees, property managers and agents.

B. THE DAMAGED AREA

20. On or about 2017, a slope, a rockery wall, and a part of the area surrounding a green located on the Premises suffered damages and partially collapsed (collectively referred to herein as the "Damaged Area").

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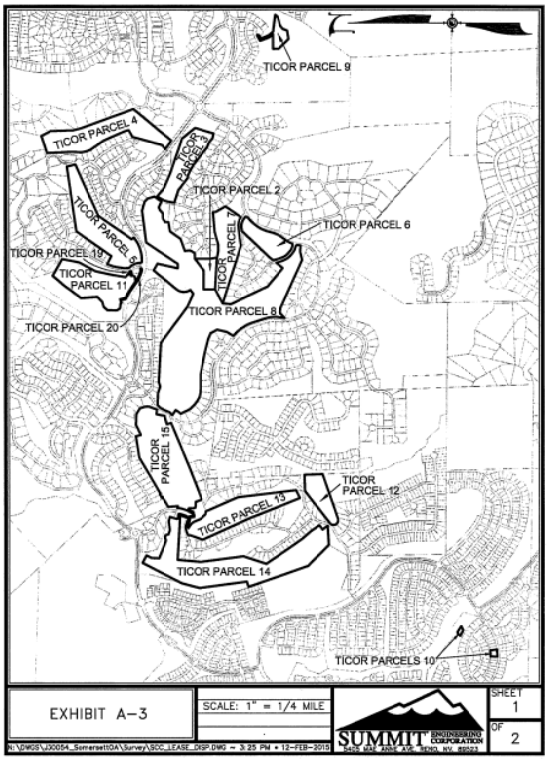
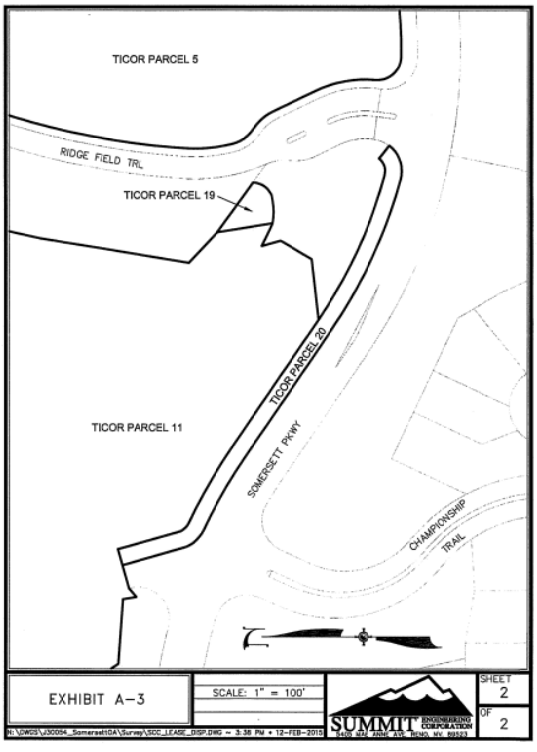
Photos of the Damaged Area:

21. The Damaged Area is part of the Property purchased by the Association from the Club pursuant to the Purchase Agreement, and leased back to the Club by the Association pursuant to the Lease.

Exhibit A-3 to the Lease:





C. REQUEST TO REPAIR

22. Upon learning of the damage to the Damaged Area, the Association requested that the Club, as the seller, vendor, and warranty provider of the Property, and as the occupying tenant of the property, repair and replace the Damaged Area in accordance with the Purchase Agreement and Lease.

23. The Club failed to repair the Damaged Area.

24. The Association, in accordance with the Purchase Agreement and the Lease, provided written notice and ample opportunity for the Club to cure its failure to comply with the terms of the Purchase Agreement and the Lease.

25. Even after being given additional written notice and ample opportunity, the Club did not repair the Damaged Area.

26. On or about October 27, 2017, the Association issued a letter to the Club representatives (hereinafter, the "October 27, 2017 letter"), which served as a notice to cure the Club's failure to comply with the terms of the Purchase Agreement and the Lease.

27. Pursuant to the Purchase Agreement and the Lease, the Club was responsible for the repair and/or replacement of the Damaged Area.

28. Pursuant to the Four Year Warranty provision included in the Purchase Agreement, the Club's maintenance and repair obligations were to continue for four (4) years after the close of escrow.

D. CONTINUING BREACH, TOLLING, AND REPAIR BY ASSOCIATION

29. The Association retained Kane Geotechnical/Construction Material Engineers, Inc. (hereinafter, "CME"), and requested that CME publish a report (hereinafter, the "CME Report") explaining the causes of damage in the Damaged Area.

30. On or about November 7, 2017, the Association issued an additional letter to the Club representatives (hereinafter, the "November 7, 2017 letter") stating that it is waiting for CME's analysis and findings of the Damaged Area, which would be published in the CME Report. The Association also extended commencement of any cure periods.

31. Shortly after the Association issued its November 7, 2017 letter to the Club

representatives, it became readily apparent that the Club did not have the funds, the intention, or the ability to repair and/or replace the Damaged Area.

32. Between November of 2017 and January of 2018, the Club did not make any efforts to repair and or replace the Damaged Area, or seek any extension of time to do so.

33. On or about December 2017, in accordance with Section 21.4 of the Lease, which states that the Association "may (but shall not be obligated to) cure such default at [the Club's] sole expense. . ." the Association commenced repairs on the Damaged Area.

34. On or about February 6, 2018, the Association issued a letter to the Club representatives (hereinafter, the "February 6, 2018 letter"), which reiterated the fact that the Association commenced repairs to the Damaged Area and provided the projected costs of same.

35. The Association requested payment of the costs incurred to repair and replace the Damaged Area in accordance with the terms of the Purchase Agreement and the Lease.

36. Initial repairs to the Damaged Area were completed on or about December 2017.

37. The Association incurred expenses in excess of fifteen thousand dollars ($15,000.00) as a result of the repairs to the Damaged Area.

38. The Club made no payments to the Association.

39. Pursuant to the Purchase Agreement and the Lease, the Club is required to pay the Association for the damage and reasonable repairs, plus interest and expenses as contained in the agreements between the parties.

40. The Club is further liable for interest, penalties, and other fees, charges, and/or costs that continue to accrue. The Association reserves the right to present and demand additional interest, penalties, and other fees, charges, and/or costs at the time of trial or judgment.

41. Although demand therefor has been made, no payments have been paid to the Association, and the principal as well as interest, penalties, and/or other fees, charges, and/or costs accrued up to and until the time of trial or judgment is now due to the Association by the Club.

42. Between 2017 and present, the Association and the Club, through their respective boards, entered into numerous tolling agreements and made efforts to reach a negotiated

resolution to no avail.

E. THE WELL AND THE PUMP

43. In 2008, a 228 HP VFD pump (hereinafter, the "Original Pump") was installed in a well located on the Property.

44. On or about February 25, 2015, the Association and the Club entered into a Water Facilities Agreement.

45. Pursuant to the Water Facilities Agreement, the Club was responsible for, in part, operation of the Water Facilities on the Property, as defined therein (Section 3.1(a)); ensuring that the Water Rights, as defined therein, are used so that they are kept in good standing and not subject to forfeiture or abandonment for non-use (Section 3.1(d)); managing the Water Rights (Section 3.2(a)); operating the Water Facilities in a continual, diligent, and prudent manner, and as reasonably requested by the non-operating party so as to provide irrigation water by and through such facilities for application as described therein (Section 3.2(b)).

46. Pursuant to the Water Facilities Agreement and the Lease, the Club was required to complete all work of maintenance, compliance, repair, restoration, or **replacement** with equal value, quality, and use.

47. Upon information and belief, the Original Pump was capable of exceeding a 400 gallons per minute (hereinafter, "gpm") flow of water in the well.

48. In 2017, the Original Pump had to be replaced.

49. Pursuant to the Water Facilities Agreement and the Lease, the Club was responsible for replacing the Original Pump.

50. However, in 2017, the Club installed a 60 HP pump (hereinafter, the "New Pump") in the well.

51. Upon information and belief, the New Pump was only capable of pumping approximately a 120 gpm flow of water in the well.

52. The Association provided the Club written notice and opportunity to cure the default in accordance with the Purchase Agreement, Lease, and Water Facilities Agreement.

53. The Club has failed to replace the New Pump, and accordingly has breached the

terms, provisions, and covenants of Lease and the Water Facilities Agreement.

54. From the time that the Club replaced the Original Pump, the Association and the Club made efforts to reach a negotiated settlement in good faith, but to no avail.

55. Pursuant the Purchase Agreement, Lease, and Water Facilities Agreement, the Club serves mutual roles, including that of seller, tenant, and vendor responsible for maintenance and repair obligation(s).

56. The Association herein commences this civil action, in part, to protect the health, safety, and welfare of the members of the Association.

FIRST CAUSE OF ACTION

(Breach of Contract)

57. Plaintiff repeats and re-alleges, and incorporates by reference, all prior paragraphs of this Complaint as though fully set forth herein.

58. The Parties entered into valid contracts—the Purchase Agreement, the Lease, and the Water Facilities Agreement.

59. The Association performed all of the duties and obligations required of it under the Purchase Agreement, the Lease, and the Water Facilities Agreement.

60. The Club failed to perform the terms, provisions, and covenants required by it in accordance with both the Purchase Agreement and the Lease, including failing to repair/replace the Damaged Area, and failing to reimburse the Association the entire amount of the expenses incurred to repair the Damaged Area and the related fees to cure the default under the Purchase Agreement and the Lease.

61. Further, the Club failed to perform the terms, provisions, and covenants required by it in accordance with the Water Facilities Agreement, including failing to replace the Original Pump with a pump that is equal in value, quality, and use, which will have reverberating effects on different rights and capabilities.

62. Accordingly, the Club is in breach of the Purchase Agreement, the Lease, and the Water Facilities Agreement.

63. The Club's breach and failure of performance was unexcused.

64. As a direct and proximate result of the Club's breach of the Purchase Agreement, the Lease, and the Water Facilities Agreement, the Association has incurred expenses, and has suffered and will continue to suffer damages in excess of fifteen thousand dollars ($15,000.00), exclusive of costs and interest, in an amount to be determined according to proof adduced at trial.

65. The Association has further been required to retain the services of an attorney to prosecute this action on its behalf, and as such, is entitled to attorneys' fees and costs incurred in prosecuting this matter.

SECOND CAUSE OF ACTION

(Breach of Implied Covenant of Good Faith and Fair Dealing)

66. Plaintiff repeats and re-alleges, and incorporates by reference, all prior paragraphs of this Complaint as though fully set forth herein.

67. In Nevada, in every contract, including the Purchase Agreement, the Lease, and the Water Facilities Agreement mentioned herein, there exists in law an implied covenant of good faith and fair dealing, that is, an implied covenant to act in good faith in performance and enforcement of the contract.

68. The Association had a justifiable expectation to receive certain benefits consistent with the spirit of the Purchase Agreement, the Lease, and the Water Facilities Agreement.

69. The Club breached the implied covenant of good faith and fair dealing by failing to perform the terms, provisions, and covenants required by it in accordance with the Purchase Agreement, the Lease, and the Water Facilities Agreement, including, *inter alia*, failing to reimburse the Association the entire amount of the expenses incurred to repair the Damaged Area and the related fees to cure the default under the Purchase Agreement and the Lease.

70. Upon information and belief, the Club's breach of the implied covenant of good faith and fair dealing was deliberate.

71. The Club's acts and omissions have directly and proximately caused the Association to suffer general and consequential damages in excess of fifteen thousand dollars ($15,000.00), exclusive of costs and interest, in an amount to be determined according to proof at trial.

72. The Association has further been required to retain the services of an attorney to prosecute this action on its behalf, and as such, is entitled to attorneys' fees and costs incurred in prosecuting this matter.

THIRD CAUSE OF ACTION

(Breach of Express Warranty)

73. Plaintiff repeats and re-alleges, and incorporates by reference, all prior paragraphs of this Complaint as though fully set forth herein.

74. In addition to the contractual obligations described above, the Club made an affirmation of fact relating to the Property, and that affirmation became a part of the basis for the bargain.

75. Specifically, pursuant to Section 9A of the Purchase Agreement, the Club made an express warranty that its maintenance and repair obligations of the Property shall continue for four (4) years after the Close of Escrow, and this four (4) year covenant to maintain and repair the Property shall survive the Close of Escrow.

76. The Club breached its express warranty by failing to repair and/or replace the Damaged Area, and subsequently failing to reimburse the Association the entire amount of the expenses incurred to repair the Damaged Area and the related fees to cure the default under the Purchase Agreement and the Lease.

77. As a direct and proximate result of the Club's breach of its express warranty included in the Purchase Agreement, the Association has incurred expenses, and has suffered and will continue to suffer damages in excess of fifteen thousand dollars ($15,000.00), exclusive of costs and interest, in an amount to be determined according to proof adduced at trial.

78. The Association has further been required to retain the services of an attorney to prosecute this action on its behalf, and as such, is entitled to attorneys' fees and costs incurred in prosecuting this matter.

FOURTH CAUSE OF ACTION

(Unjust Enrichment)

79. Plaintiff repeats and re-alleges, and incorporates by reference, all prior paragraphs

of this Complaint as though fully set forth herein.

80. The Association has conferred a benefit and provided to the Club, the complete repair of the Damaged Area on the Property at the Association's expense.

81. The Club accepted and retained the benefit without the repayment of the value for the same.

82. Notwithstanding demand therefor by the Association, the Club has refused, and continues to refuse, to reimburse the Association the entire amount of the expenses incurred to repair the Damaged Area and the related fees to cure the default under the Purchase Agreement and the Lease.

83. Based upon these facts and circumstances, and without limitation to other and further proof, it would be inequitable and unjust for the Club to have received the benefit and value without reimbursing the Association the reasonable value thereof.

84. As a direct and proximate result of the acts of the Club as set forth above, the Association has been damaged in excess of fifteen thousand dollars ($15,000.00), exclusive of costs and interest, in an amount to be determined according to proof adduced at trial.

85. The Association has further been required to retain the services of an attorney to prosecute this action on its behalf, and as such, is entitled to attorneys' fees and costs incurred in prosecuting this matter.

FIFTH CAUSE OF ACTION

(Equitable Relief / Specific Performance)

86. Plaintiff repeats and re-alleges, and incorporates by reference, all prior paragraphs of this Complaint as though fully set forth herein.

87. Aside from the Club's obligations under the Lease, pursuant to the Water Facilities Agreement, the Club is responsible for, under certain and definite terms, the operation of the Water Facilities, as defined therein (Section 3.1(a)); ensuring that the Water Rights, as defined therein, are used so that they are kept in good standing and not subject to forfeiture or abandonment for non-use (Section 3.1(d)); managing the Water Rights (Section 3.2(a)); operating the Water Facilities in a continual, diligent and prudent manner and as reasonably

requested by the non-operating party so as to provide irrigation water by and through such facilities for application as described therein (Section 3.2(b)).

88. Upon information and belief, failure to properly replace the New Pump, risks under-utilizing, and therefore, abandoning essential water rights.

89. The water rights to the Property are so unique that monetary remedies at law would be inadequate.

90. The Association performed all of the duties and obligations required of it under all the agreements, including the Water Facilities Agreement.

91. The Club must be ordered to replace the New Pump to protect the legitimacy of water rights, which risk loss that would not necessarily be replaceable or purchased from a third-party.

92. Therefore, the Association respectfully requests that the Club be ordered to perform its duties and obligations required of it under the Water Facilities Agreement, by immediately replacing the New Pump with a pump that is equal in value, quality, and use to the Original Pump, and capable of exceeding a 400 gallons per minute (hereinafter, "gpm") flow of water in the well.

SIXTH CAUSE OF ACTION

(Declaratory Relief)

93. Plaintiff repeats and re-alleges, and incorporates by reference, all prior paragraphs of this Complaint as though fully set forth herein.

94. A justiciable controversy has arisen and now exists between the Parties concerning the Property and Damaged Area, specifically whether the Club was responsible for the repair and/or replacement of the Damaged Area pursuant to the Purchase Agreement and the Lease.

95. A justiciable controversy has arisen and now exists between the Parties concerning the Property and Damaged Area, specifically whether the Club is required to reimburse the Association the entire amount of the expenses incurred to repair the Damaged Area and the related fees to cure the default under the Purchase Agreement and the Lease.

96. A judicial determination is necessary, proper, and ripe under the circumstances in order that the Parties may determine their rights and duties under the Purchase Agreement and the Lease.

97. The Association is entitled to a judicial determination of the Parties' respective rights and duties as they relate to the Property and the Damaged Area.

98. Further, the Association is entitled to an order awarding it the entire amount of the expenses incurred to repair the Damaged Area and the related fees to cure the default under the Purchase Agreement and the Lease.

99. The broad indemnity provided by the Club, an exemption from liability of the Association, coupled with the Club's broad maintenance, repair, and replacement duties, potentially make the Club liable for the entire cost of the repair of the Damaged Area. Additionally, the warranty section of the Purchase Agreement referred to above also makes the Club responsible for the entire cost of repair of the Damaged Area.

SEVENTH CAUSE OF ACTION

(Equitable Relief / Specific Performance for Termination and Turnover of Premises)

100. Plaintiff repeats and re-alleges, and incorporates by reference, all prior paragraphs of this Complaint as though fully set forth herein.

101. The Club has violated the terms of the Lease and is in material default of the Lease.

102. In accordance with Section 21 of the Lease, titled Remedies, the Association is entitled to terminate the Lease and terminate the Club's right to possession of the Premises.

103. As an alternative remedy, and without waiver to unlawful detainer remedies available to the Association under NRS Chapter 40, the Association seeks eviction and turnover of the Premises, at its election at the time of trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

A. For general, special, and compensatory damages in excess of fifteen thousand dollars ($15,000.00);

B. For an award of attorneys' fees and costs of suit as permitted by law and in accordance with the agreements referenced herein;

C. Judgment in favor of Plaintiff and against Defendant;

D. Issuance of equitable relief as appropriate including, but not limited to, replacement of the New Pump whereas not to further endanger the water rights necessary to maintain the Property;

E. Issuance of equitable relief as appropriate including, but not limited to, an order to turn over the Premises to Plaintiff;

F. A declaration of the Parties' rights and obligations;

G. For an award of pre-judgment and post-judgment interest; and

H. For any further relief that the Court may deem just and proper.

AFFIRMATION

Pursuant to NRS 239B.030(1), the undersigned does hereby affirm that this document and any attachments do not contain personal information as defined in NRS 603A.040 about any person.

DATED this 5th day of June, 2020

WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP

By: */s/ Bradley S. Schrager*

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